

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Petition of the State of Ohio for) PR Docket No. 94-109
Authority to Continue to)
Regulate Commercial Mobile)
Radio Service) DOCKET FILE COPY ORIGINAL

OPPOSITION OF AMERITECH
TO PUCO PETITION FOR RECONSIDERATION

Ameritech respectfully submits its Opposition in the above-captioned matter in response to the Petition For Reconsideration ("PFR") filed by the Public Utilities Commission of Ohio ("PUCO") on June 19, 1995. By that pleading, PUCO apparently seeks reconsideration of the FCC's May 19, 1995 Order¹ denying PUCO's earlier Petition² seeking to continue to regulate Commercial Mobile Radio Services ("CMRS").

PUCO's pleading is factually insufficient, in that it offers absolutely no grounds for FCC reconsideration of its dismissal of PUCO's original Petition. In addition, the PFR is procedurally defective in two ways: (1) it fails to state the action taken by the Commission which PUCO believes should be changed, and (2) it fails to state the form of relief sought. For these reasons, the PFR should be denied.

¹ In the Matter of Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services, PR Docket No. 94-109, Report and Order, released May 19, 1995 ("Order Denying PUCO Petition").

² Statement of the Public Utilities Commission of Ohio's Intention To Preserve its Right for Future Rate and Market Entry Regulation of Commercial Mobile Services, filed August 9, 1994 ("Petition to Continue Regulation").

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I. PUCO's PETITION IS FACTUALLY INSUFFICIENT

The three separate and distinct bases upon which PUCO's Petition to Continue Regulation was properly rejected are clear and specific. As stated in the Commission's Order, PUCO's original Petition failed to meet two statutory burdens imposed by Congress in the Omnibus Budget Reconciliation Act of 1993; namely, PUCO had failed to demonstrate that (1) "it was regulating 'the rates charged' by any CMRS provider in Ohio as of June 1, 1993," and that (2) "market conditions for the service at issue fail to protect subscribers adequately from unjust and unreasonable rates or unjustly and unreasonably discriminatory rates."³ A third ground for denial was the fact that the Communications Act "wholly displaces state regulation of CMRS entry."⁴

Faced with this clear and specific language rejecting its Petition to Continue Regulation, PUCO's PFR makes no mention of the substantive bases upon which the FCC relied. Instead, the instant PFR attempts to introduce selected pages of a PUCO Order issued October 22, 1993 involving a pending complaint case,⁵ and argues that the final adjudication of that matter would provide a record upon which the FCC could rely "to establish a demarcation between preempted rate regulation and retained state authority over terms and conditions."⁶

This ancillary topic was not related to the reasons for which PUCO's Petition To Continue Regulation was rejected. Nonetheless, "in the interest of

³ Order Denying PUCO Petition, at 18 (¶ 31).

⁴ Ibid.

⁵ PFR, at 3.

⁶ Ibid. It should also be noted that since this proffered "evidence" admittedly does not present any new facts qualifying for consideration under the Commission's rules for admissibility of "facts not previously presented to the Commission" [47 CFR §§ 1.106 (b)(2) and (b)(3)(c)(1)], the Commission has ample grounds for rejecting the PFR without so much as reviewing this material [47 CFR 1.106 (c)].

minimizing future proceedings directed at this issue,”⁷ the Commission succinctly stated that “we believe Ohio retains whatever authority it possesses under state law to monitor the structure, conduct, and performance of CMRS providers in that state.”⁸ The Commission finally disposed of this issue as irrelevant, stating that “the statutory language is not broad enough to accommodate Ohio’s apparent interest in asserting authority to regulate marketplace entry by CMRS providers.”⁹

Thus, having presented no fact -- nor even any argument -- that speaks to the Commission’s denial of PUCO’s Petition To Continue Regulation, the PFR is factually deficient. There is simply no basis upon which the Commission could possibly reconsider its denial.

II. THE PETITION IS PROCEDURALLY DEFECTIVE

The Commission’s requirements governing Petitions For Reconsideration are well-known and clearly delineated in the rules. Specifically, any Petition For Reconsideration must (1) “state with particularity the respects in which petitioner believes the action taken by the Commission ... should be changed,” and (2) “state specifically the form of relief sought.”¹⁰

⁷ Order Denying PUCO Petition, at 24 (¶ 42).

⁸ Ibid., ¶ 44.

⁹ Id., ¶ 45.

¹⁰ 47 CFR § 1.106(d)(1).

These requirements are both simple and seemingly easy to understand. Unfortunately, the relief requested by PUCO is neither. What the PFR appears to be requesting is that the record on this PFR be kept open indefinitely.¹¹ This result cannot seriously have been intended, in light of the Commission's stated interest in "minimizing future proceedings directed at this issue."¹² At any rate, the relief sought by PUCO is unclear on the face of the PFR, and the Commission would be likely be hard-pressed to fashion an Order granting any relief.

The PFR also fails to state the respects in which PUCO believes that the Commission's Order should be changed. The Commission simply denied PUCO's Petition to Continue Regulation, doing so quite explicitly and unequivocally.¹³ As discussed in section (I.) above, the bases for denial were three very straightforward statements of statutory interpretation. There is nothing in the PFR that so much as mentions either the denial or the Commission's reasons for it. Since neither reasoning nor facts are presented on these topics, the basis upon which reconsideration of the Commission's action is sought can only be guessed at. This is simply not a basis upon which the FCC can act at all.

¹¹ This is the only apparent meaning that can be assigned to PUCO's convoluted request "that it be permitted to supplement this Petition For Reconsideration with results of the adjudication of the above referenced complaint should the PUCO's decision in that complaint provide information which would be relevant to the FCC's determinations in the instant case (sic)." PFR, at 3-4.

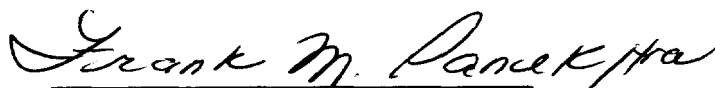
¹² See note 7 supra.

¹³ PUCO's Petition was "DENIED for the reasons set forth above." Order Denying PUCO Petition, at 25 (¶ 46).

III. CONCLUSION

For the above-stated reasons, the Petition For Reconsideration should be denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "Frank M. Panek".

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Dated: June 29, 1995

CERTIFICATE OF SERVICE

I, Deborah L. Thrower do hereby certify that a copy of the foregoing Opposition of Ameritech to PUCO Petition for Reconsideration has been served on all parties of record, by first class mail, postage prepaid, on this 29th day of June 1995.

By: Deborah Thrower
Deborah L. Thrower